RECORDING REQUESTED PURSUANT
AND WHEN RECORDED MAIL TO:

County of Contra Costa
2530 Arnold Drive, Suite 190
Martinez, California 94553
Attention: Deputy Director - Redevelopment

No fee for recording pursuant to
Government Code Section 27383

INTERCREDITOR AGREEMENT

(Lafayette Senior Housing)

This Intercreditor Agreement (the "Agreement") is made as of December __, 2008, by and among the Redevelopment Agency of the City of Lafayette, a public body, corporate and politic (the "Agency"), the County of Contra Costa, a political subdivision of the State of California (the "County"), and Eden Housing, Inc., a California nonprofit public benefit corporation (the "Borrower"), with reference to the following facts:

A. The Borrower intends to develop approximately forty-five (45) units of multifamily housing for seniors and one manager's unit (the "Development") in the City of Lafayette, County of Contra Costa, on the real property described on the attached Exhibit A (the "Property").

B. Pursuant to a Loan Agreement with the Agency (the "Agency Loan Agreement"), dated as of December ___, 2008, the Agency has agreed to loan the Borrower the sum of Three Million Dollars ($3,000,000) (the "Agency Loan"). The Agency Loan will be used for acquisition of the Property and will be evidenced by a promissory note executed by the Borrower in favor of the Agency (the "Agency Note"). The Borrower's obligation to repay the Agency Loan, as evidenced by the Agency Note, will be secured by a deed of trust on the Property (the "Agency Deed of Trust").

C. Pursuant to a CDBG Loan Agreement dated of even date herewith (the "County Loan Agreement"), by and between the County and the Borrower, the County has agreed to loan the Borrower a total of One Million Four Hundred Thousand Dollars ($1, 400,000) (the "County Loan"), consisting of Community Development Block Grant funds. The County Loan is evidenced by a promissory note by Borrower in favor of the County (the "County Note"). The Borrower's obligation to repay the County Loan, as evidenced by the County Note, will be secured by a deed of trust on the Property (the "County Deed of Trust", and together with the Agency Deed of Trust, the "Deeds of Trust").

D. The Agency, the County, and the Borrower (the "Parties") wish the Agency Deed of Trust and the County Deed of Trust (the "Deeds of Trust") to be equal in lien priority and for the Parties to share, based on the Prorata Percentages (as defined below), in the Lender's Share of Residual Receipts of the Development (defined below) and in any proceeds derived from a foreclosure of any of the Deeds of Trust.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. The following definitions shall apply for purposes of this Agreement:

(a) "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments imposed on the Development; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Development and approved by the County and the Agency; issuer fees; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the County and the Agency; partnership management fees (including any asset management fees) payable to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, in an amount not to exceed Twnety-Five Thousand Dollars ($25,000), (and only for the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended), which partnership management fee allowance shall convert to an asset management fee allowance in an amount to be negotiated by the Parties after the fifteen (15)-year compliance period, all as approved by the County and the Agency at the time the tax credit syndication occurs; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Development; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Development in an amount not to exceed six tenths of one percent (.6%) of the total development cost of the Development; cash deposited into an operating reserve in an amount not to exceed three percent (3%) of Annual Operating Expenses or the amount required in connection with any permanent loans for the Development and the tax credit syndication, whichever is greater (or any greater amount approved by the County and the Agency) but with the operating reserve capped at six (6) months gross rent from the Development (as such rent may vary from time to time); tenant services in an amount approved by the County and the Agency and pursuant to a tenant services plan approved annually by the County and the Agency; payment of any previously unpaid portion of the developer fee (without interest) not exceeding a cumulative developer fee in the maximum amount set forth in the County Loan Agreement; extraordinary operating costs specifically approved by the County and the Agency; and other ordinary and reasonable operating expenses not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Development, as determined by the accountant for the Development.

(b) "Gross Revenue" with respect to a particular calendar year shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; net proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance not paid to senior lenders; the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and condemnation awards for a taking of part or all of the Development for a temporary period and not paid to senior lenders. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(c) "Lenders' Share of Residual Receipts" shall mean seventy-five percent (75%) of the Residual Receipts.

(d) "Net Proceeds of Financing" shall mean the portion of financing for the Development as approved by the County and the Agency pursuant to their respective Loan Documents, that is not required to pay the costs of acquisition and development of the Development (including but not limited to the funding of reserves and the payment of the non-deferred portion of developer fee up to the maximum permitted in the County Loan Agreement). Net Proceeds of Financing, if any, shall be determined pursuant to the procedure set forth in Section 4 below.

(e) "Prorata Percentages" means, at any time any determination thereof is to be made, (i) for the Agency, the percentage resulting from dividing the Agency Loan funds disbursed to the Borrower in accordance with the Agency Loan Agreement by the sum of such Agency Loan funds disbursed in accordance with the Agency Loan Agreement and County Loan funds disbursed to the Borrower in accordance with the County Loan Agreement and (ii) for the County, the percentage resulting from dividing the County Loan funds disbursed to the Borrower in accordance with the County Loan Agreement over the sum of such County Loan funds disbursed in accordance with the County Loan Agreement and Agency Loan funds disbursed to the Borrower in accordance with the Agency Loan Agreement. In calculating the Prorata Percentages, Agency Loan funds and County Loan funds that have been repaid shall be deemed not to have ever been disbursed.

(f) "Residual Receipts" in a particular calendar year shall mean the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above) for that calendar year.

2. Loans. The Agency shall make the Agency Loan to the Borrower in accordance with the Agency Loan Agreement. The County shall make the County Loan to the Borrower in accordance with the County Loan Agreement.

3. Prorata Payment.

(a) No later than May 15 of each calendar year, commencing on May 15 of the year following the calendar year in which the Development has received a final certificate of occupancy certifying that the Development may be legally occupied, Borrower shall pay the

County and the Agency, respectively, their Prorata Percentages of the Lenders' Share of Residual Receipts. Payments to the County under this subsection shall be credited as repayments to the County Loan. Payments to the Agency under this subsection shall be credited as repayments of the Agency Loan.

(b) The Agency Loan shall be repaid by the Borrower pursuant to the repayment terms in the Agency Loan Agreement and the Agency Note, subject to applicable notice and cure periods, pursuant to the Agency Loan Agreement. In the event of any conflict between the repayment terms and provisions of the Agency Loan Agreement and this Agreement, the provisions of this Agreement shall apply. The Agency shall not consent to any amendment or waiver of such repayment terms that might reasonably be considered to impair the County's security under the County Loan without the County's prior written approval, which the County may withhold in its sole discretion.

(c) The County Loan shall be repaid by the Borrower pursuant to the repayment terms in the County Loan Agreement and the County Note. In the event of any conflict between the repayment terms and provisions of the County Loan Agreement and this Agreement, the provisions of this Agreement shall apply. The County shall not consent to any amendment or waiver of such repayment terms that might reasonably be considered to impair the Agency's security under the Agency Loan without the Agency's prior written approval, which the Agency may withhold in its sole discretion.

4. Special Repayments from Net Proceeds of Financing. Borrower shall make special repayments applied to the principal of the Agency Loan and the County Loan in a total amount equal to sixty-six and 66/100 percent (66.66%) of the Net Proceeds of Financing, such amount to be divided between the Agency and the County in proportion to their Prorata Percentages, with the respectively allocated amounts being utilized for a special repayment of the respective loans. The amount of the Net Proceeds of Financing shall be determined by the Borrower and submitted to the County and Agency for approval on the date the Borrower submits the final cost audit for the Development to the California Tax Credit Allocation Committee. The amount of the Net Proceeds of Financing shall be calculated using the actual amount of the permanent Approved Financing realized by the Borrower, provided that Borrower provides sufficient evidence that the actual amount of permanent Approved Financing realized by Borrower is the maximum amount that Borrower could secure for the Development applying reasonable underwriting standards. The Borrower shall also submit to the County and Agency any additional documentation sufficient to verify the amount of the Net Proceeds of Financing. The County and Agency shall each approve or disapprove Borrower's determination of the amount of the Net Proceeds of Financing in writing within thirty (30) days of their receipt of Borrower's cost audit and supplemental documentation. If Borrower's determination is disapproved by the County or Agency, Borrower shall re-submit documentation to the County and Agency until both County and Agency approval is obtained. The County's and Agency's shares of the Net Proceeds of Financing shall be due the County and Agency from the Borrower no later than fifteen (15) days following the date Borrower receives its final capital contribution from the Borrower's limited partner investor, or if no limited partner investor, the date Borrower has closed all permanent financing for the Development.

5. Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the Agency Loan and the County Loan, the Borrower shall furnish to the Agency and the County an audited statement duly certified by an independent firm of certified public accountants approved by the Agency and the County, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

(b) Books and Records. The Borrower shall keep and maintain at Borrower's office, or elsewhere with the County's and Agency's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the County and the Agency, their auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental Agency shall at all reasonable times be open for inspection by the County and the Agency at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) County and Agency Audits. The receipt by the County or the Agency of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County or the Agency of any loan repayment for any period shall not bind the County or the Agency as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the County or the Agency or any designated agent or employee of the County and/or the Agency at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County or the Agency shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the County and/or the Agency, then such deficiency shall become immediately due and payable with interest at the Default Rate set forth in the County Loan Agreement or Agency Loan Agreement, as applicable, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the County and/or the Agency are entitled to any additional County Loan and Agency Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges set forth in the preceding sentence referenced hereinabove, all of the County's and/or the Agency's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records. Notwithstanding the above, the County and the Agency shall not require the Borrower to pay the County's and Agency's audit costs and expenses unless the amount due the County and the Agency as a result of the audit

exceeds Three Thousand Dollars ($3,000), or if the County and/or the Agency reasonably determine that Borrower's error is a repeated error or otherwise made in bad faith.

6. Deeds of Trust. The Agency shall secure the Agency Loan with the Agency Deed of Trust. The County shall secure the County Loan with the County Deed of Trust. The County Deed of Trust shall be recorded prior to the Agency Deed of Trust, but the two deeds of trust shall share co-equal lien priority, and the County and the Agency agree to share foreclosure, insurance, and condemnation proceeds in accordance with the Prorata Percentages.

7. Notice of Default.

(a) The County and the Agency shall each notify the other promptly upon declaring a default or learning of the occurrence of any material event of default, or any event which with the lapse of time would become a material event of default, under its respective loan documents for the Agency Loan and the County Loan.

(b) The Agency and the County agree not to make a demand for payment from Borrower or accelerate the County Note or the Agency Note, as the case may be, or commence enforcement of any of the rights and remedies under the Agency Deed of Trust or County Deed of Trust, as the case may be, until the date which is five (5) business days following delivery of written notice by the Party enforcing its rights (the "Enforcing Party") to the other Party stating that a "Default" (as defined in the relevant Deed of Trust) has occurred and is continuing and that the Enforcing Party is requesting the other Party's assistance in foreclosure pursuant to Section 8.

8. Cooperation in Foreclosure.

(a) In the event of a default under the Agency Loan and/or the County Loan, after expiration of any applicable cure periods, the party who is the lender on the defaulted loan shall cooperate with the other party to coordinate any foreclosure proceedings or other appropriate remedies.

(b) Neither the County nor the Agency shall contest the validity, perfection priority or enforceability of the lien granted by the respective Deed of Trust to the other Party. Notwithstanding any failure of a party to perfect its lien on the Property or any other defect in the security interests or obligations owing to such Party, the priority and rights as between the Parties hereto shall be as set forth herein.

9. Foreclosure Proceeds. If there is a foreclosure, or any other action, judicial or nonjudicial, under either or both of the Deeds of Trust (including the giving of a deed in lieu of foreclosure), then the Agency and the County shall be entitled to share in any proceeds which shall ensue from such action, after any and all senior lienholders have been satisfied, and after payment of all reasonable expenses of both Parties incurred in connection with the action in accordance with each of their Prorata Percentages.

10. Title to Property. If either the Agency or the County is entitled to title to the Property as a consequence of the Borrower's default, then title shall be held in tenancy in common by both of them, with the percentage ownership of each based on the Prorata

Percentages. Subsequent decisions to hold or sell the Property shall be made by joint decision of the Agency and the County.

11. Notices. Formal notices, demands, and communications between the Parties shall not be deemed given unless dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt, to the principal office of the Parties as follows:

Agency:	Redevelopment Agency of the City of Lafayette 3675 Mt. Diablo Boulevard Lafayette, CA 94549 Attention: Executive Director
County:	County of Contra Costa Community Development Department 2530 Arnold Drive, Suite 190 Martinez, CA 94553 Attention: Deputy Director – Redevelopment
Borrower:	Eden Housing, Inc. 22645 Grand Street Hayward, CA 94541 Attention: Executive Director

Copies of notices to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides the Agency and County with its address. Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

12. Titles. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

13. California Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

14. Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

15. Legal Actions. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action.

16. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the distribution of proceeds upon foreclosure of or other remedies under the Deeds of Trust.

17. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

18. Amendments. This Agreement shall not be modified except by written instrument executed by and amongst the Parties. The County shall not, without the written consent of the Agency, agree to an amendment of the County Loan Agreement or the County Note that would reasonably be expected to materially adversely affect the Agency. The Agency shall not, without the written consent of the County, agree to an amendment of the Agency Loan Agreement, or the Agency Note that would reasonably be expected to materially adversely affect the County.

19. HUD-Required Provisions. Borrower anticipates applying for assistance from the U.S. Department of Housing and Urban Development ("HUD") under its Section 202 program. In the event that the Borrower obtains funding from HUD, if required by HUD, the Parties agree to amend this document to incorporate provisions required by HUD, including, but not limited to, incorporating a HUD rider to this Agreement setting forth HUD required provisions related to the financing of the Development.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: _____
James Kennedy
Deputy Director – Redevelopment

APPROVED AS TO FORM:

Silvano B. Marchesi, County Counsel

By: _____
Keiko Kobayashi
Deputy County Counsel

REDEVELOPMENT AGENCY OF THE CITY OF LAFAYETTE, a public body, corporate and politic

By: _____

Its: _____

EDEN HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

RECORDING REQUESTED BY &
AFTER RECORDING, MAIL TO:

City of Lafayette
3675 Mt. Diablo Boulevard, Suite 200
Lafayette, CA 94549
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

(Mt. Diablo Boulevard, Lafayette)

This Agreement is entered into as of December 10, 2008, by and between the City of Lafayette (the "City") and Eden Housing, Inc., a California nonprofit public benefit corporation (the "Owner"), in connection with the following facts:

A. The Owner is a nonprofit public benefit corporation organized for the purpose of providing affordable housing for very low to low and moderate income households.

B. The Owner intends to acquire that parcel of real property on Mt. Diablo Boulevard in Lafayette, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property") for the purpose of constructing, owning and operating forty-five (45) units of rental housing affordable to very low and lower income senior households plus one resident manager's unit (the "Development").

C. The City adopted Density Bonus Regulations to comply with the density bonus provisions of the Government Code. Under the City's Density Bonus Regulations, the City granted to Owner a density bonus for Owner's Development which requires the Owner to construction at least (a) 20% of the units for low-income households, or (b) 15% of the units for very-low income households, or (c) 50% of the units for senior citizens. The purpose of this Regulatory Agreement is to set forth the Owner's compliance with the City's Density Bonus Regulation by restricting 15% of the units to very-low income.

D. Pursuant to that Loan Agreement between the Agency and Owner dated as of December 9, 2008 (the "Loan Agreement"), the Redevelopment Agency of the City of Lafayette (the "Agency") is making or has made a predevelopment, acquisition and construction loan to the Owner with funds from the Agency's Housing Fund to assist in financing the Development which is referenced in this Agreement as the "Agency Loan".

Now, therefore, to comply with Government Code Section 65915 and for other valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

"Agency" means the Redevelopment Agency of the City of Lafayette, a public body, corporate and politic, as the lender of the Agency Loan to Owner.

"AMI" means the area median income for Contra Costa County, California adjusted for family size appropriate for the Unit, by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and California Health and Safety Code Section 50093.

"City" shall mean the City of Lafayette, California.

"Number of Restricted Units" or "NRU" shall mean seven (7) of the Units in the Development.

"Qualified Household" shall mean a household composed of one (1) or more persons who is a Senior Citizen and also a Low Income Household who intends to reside in the Unit as his or her primary residence on a permanent basis and whose members that are not Senior Citizens, if any, are each a "Qualified Permanent Resident."

"Qualified Permanent Resident" shall have the meaning ascribed to the term in California Civil Code Section 51.3(b), sub-sections (2) and (3), as such code section may be amended, replaced or renumbered from time to time.

"Restricted Unit" or "Restricted Units" means a Unit or Units that are subject to the occupancy and rent restrictions set forth in this Regulatory Agreement.

"Senior Citizen" means a person sixty-two (62) years of age or older, or 55 years of age or older in a senior citizen housing development as defined by California Civil Code Section 51.3(b) subsection (4).

"Unit" means one residential one bedroom dwelling unit within the Development or one residential two bedroom unit within the Development.

"Very Low Income Household" means a person or family whose incomes do not exceed the qualifying limits for very lower income families, as established and amended from time to time by HUD, pursuant to Section 8 of the United States Housing Act of 1937 or as otherwise determined by the California Department of Housing and Community Development, pursuant to California Health and Safety Code Section 50105.

2. Use of the Property. The Owner hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Owner shall not use the Property other than for the operation of a senior low-income rental housing project in compliance with all of the following:

A. Development. The Owner represents, warrants, and covenants in accordance with the schedule for construction approved by the City, to construct and operate a senior housing rental development on the Property consisting of forty-five (45) senior units and one resident manager's unit (the "Development"). All the units, except for the resident manager unit(s), shall be rented to persons or families who qualify as "elderly" or "senior" households under applicable federal, State, or local law.

B. Rent and Income Restrictions. On completion of construction, the Owner covenants that the NRU shall be occupied or held available for occupancy by a Qualified Household on a continuous basis throughout the Term. The rent paid by tenants of the NRU shall not exceed one-twelfth ($1/12^{th}$) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size. Adjustments for assumed household size shall be made in accordance with the applicable provisions of the Redevelopment Law and California Tax Credit Allocation Committee ("TCAC") guidelines. The Owner understands and agrees that the NRU required by this Agreement shall not be the same units as those restricted by the Regulatory Agreement between the Owner and Agency recorded concurrently herewith in connection with the Agency Loan.

(i) Rent shall be increased no more than once annually based upon income recertifications described in Section 3(a). Households shall be given at least sixty (60) days written notice prior to any rent increase.

(ii) Increased Income of Tenants.

(1) Non-Qualifying Household. If, upon recertification of the income of a tenant, the Owner determines that a former Very Low Income Household has an adjusted income exceeding the maximum qualifying income for a Very Low Income Household, such tenant shall be permitted to continue occupying the Unit and upon expiration of the tenant's lease and upon sixty (60) days written notice, either (i) the rent shall be increased to the fair market rent, or (ii) with such longer notice as may be required by law, the Owner may elect not to renew the non-qualifying household's lease. The Owner shall rent the next available Unit to a Very Low Income Household to meet the requirements of Section 2.B above.

(2) Termination of Occupancy. Upon termination of occupancy of a Unit by a tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating tenant, until such Unit is reoccupied, at which time the income character of the Unit shall be redetermined to meet the occupancy requirements of Section 2.B.

C. Compliance with Regulatory Agreements. So long as the Property is encumbered by any regulatory agreement between the Owner and State or federal or State agency required by the financing for the Development and approved by either the City or the Agency as the holder of the Agency Loan, Owner's compliance with the terms of such regulatory agreement(s) shall be deemed to be in compliance with the occupancy, rent, and income restrictions set forth above.

3. Reporting Requirements. (a) The income status of each eligible household shall be determined by the Owner at the time of initial occupancy of a unit and recertified annually by the Owner using such forms and requiring such supporting information as reasonably required or approved by the City. Owner shall make a good faith effort to verify that the income stated by an applicant to rent a Restricted Unit is accurate, by taking any one or more, as necessary, of the following steps, as part of the income verification process:

(i) Obtain pay stubs for the applicant's two (2) most recent pay periods;
(ii) Obtain an income tax return for the applicant's most recent tax year;
(iii) Obtain an income verification form from the applicant's current employer;
(iv) Obtain an income verification form from the Social Security Administration and/or the California Department of Social Services, if the applicant receives assistance from either of these agencies; or
(v) If the applicant is unemployed and has no tax return, obtain another form of independent verification.

The Owner shall retain the original or copies of all certifications and recertifications and supporting information for not less than five (5) years. The City shall have the right to inspect and copy the Owner's records relating to the Development during business hours upon reasonable prior written notice.

(b) Annual reports shall be submitted to the City. The reports, at a minimum, shall include: (i) the number of persons per unit; (ii) initial occupancy date; (iii) monthly rent charged; and (iv) household income. Upon request by the City, the annual reports shall include the annual income recertification and those documents used to certify eligibility.

4. Management.

A. Owner, and the management agent (if not the Owner), shall operate the Development in a manner that will provide decent, safe and sanitary residential facilities to the occupants thereof, and will comply with all the provisions of this Regulatory Agreement and the Loan Agreement, and of any other applicable contract or agreement between Agency or the City and the Owner. The City shall have the right of reasonable review and approval of the initial management agent and every succeeding management agent. The City's approval may not be unreasonably withheld, delayed or conditioned, provided that Owner demonstrates to City that any proposed management agent possesses significant experience in the successful management of affordable residential projects materially similar to the Development.

B. Upon the request of the City, which request shall be in writing, the Owner shall cooperate with the City in the periodic review of the management practices and financial

status of the Development, but not more frequently than on a quarterly basis. The purpose of each periodic review will be to enable City to determine if the Units and the Development are being operated, maintained, and managed in accordance with the requirements and standards of this Regulatory Agreement. Results of such review by the City shall be provided to Owner.

C. Any contract for the operation or management of the Development entered into by the Owner shall provide that the contract can be terminated upon thirty (30) days notice with cause. In the event that the Development is not being operated and managed in accordance with the requirements and standards of this Regulatory Agreement, the Owner shall remove the management agent and replace the management agent with an agent approved by the City. The Owner's failure to remove the management agent shall constitute an Event of Default under this Regulatory Agreement, and the City may enforce this provision through legal proceedings as specified herein.

5. Insurance Requirements.

A. Insurance. The Owner, to protect the City and their City Council, commissions, agents, attorneys, officers, employees, volunteers, and representatives (collectively, "Additional Insureds") against any and all claims and liability for death, injury, loss and damage resulting from the Owner's actions in connection with this Regulatory Agreement, the Property and the Development, shall secure and maintain the insurance coverage, described in and required by this Section.

B. Liability and Permanent Insurance Requirements. The Owner shall maintain in full force and effect for the full term of this Regulatory Agreement, subject to the following insurance coverage:

(1) (i) Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Owner pursuant to this Regulatory Agreement), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Owner's operation of the Development. The commercial general liability insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate.

(ii) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used by the Owner with minimum limits for Bodily Injury and Property Damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

(iii) The Owner shall maintain Fire and Extended Coverage Insurance on the Development on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value of the Development.

(2) The Commercial General Liability Insurance required in sub-paragraph (1)(i) above shall include an endorsement naming the Additional Insureds as additional insured.

(3) If any of the insurance coverage is written on a claims-made basis, such insurance policy shall provide an extended reporting period continuing through the fifth (5th) anniversary of the expiration of the term of this Regulatory Agreement. The requirements of this sub-paragraph (3) shall survive any expiration or termination of this Regulatory Agreement.

(4) Receipt by the City of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this Regulatory Agreement.

(5) Subject to subparagraph (3) above, all of the insurance coverage required under this Section shall be maintained by the Owner until the expiration of the term of this Regulatory Agreement and shall not be reduced, modified, or canceled without, at least, thirty (30) days prior written notice to the City. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or endorsement. The Owner shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted, or upon insolvency of the insurer that issued the policy.

(6) All insurance to be obtained and maintained by the Owner under this Section shall be issued by a company or companies listed in the then current "Best's Key Rating Guide" publication with a minimum of an "A:VII" rating and be admitted to conduct business in the State of California by the State of California Department of Insurance.

(7) All insurance obtained and maintained by the Owner in satisfaction of the requirements of this Regulatory Agreement shall be primary to and not contributing to any insurance maintained by the City.

(8) The insurance coverage required by this Section shall not be construed to relieve the Owner of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Regulatory Agreement or otherwise at law.

(9) Failure by the Owner to maintain all insurance coverage required by this Section in effect shall be an Event of Default by the Owner. The City, at its sole option, may exercise any remedy available to it in connection with such an Event of Default. Alternatively, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Owner for any premiums and associated costs paid by the City for such insurance coverage. Any election by the City to purchase or not to purchase insurance otherwise required to be carried by the Owner shall not relieve the Owner of

its obligation to obtain and maintain the insurance coverage required by this Regulatory Agreement.

C. Adjustment in Levels of Insurance Coverage. The City and the Owner acknowledge that the insurance limits set forth in this Section were established based upon reasonable and customary limits for such policies as of the execution of this Regulatory Agreement. Upon written request from the City, Owner shall increase the limits on any policies required by this Regulatory Agreement to such amounts as may be necessary, as reasonably determined by the City, to provide that the then-current limits of the policies provide equivalent or better protection as the current limits set forth above, taking into account factors such as inflation, legal/legislative developments, and the like. City may require an increase in such limits as described in this Section no more often than once per calendar year.

D. Greater Coverage. If any other agreement concerning the Property or the Development requires insurance in amounts in excess of the amount set forth in this Section, the requirements of insurance coverage to be maintained on the Development hereunder shall be deemed satisfied by provision of such greater amounts of insurance, provided that all such insurance policies comply with all other provisions of this Section.

6. Additional Information. The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Owner which pertain to the Development.

7. Records. The Owner shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

8. On-site Inspection. The City shall have the right, following not less than twenty-four (24) hours prior written notice, to perform an on-site inspection of the Development at least one time per year. The Owner agrees to cooperate in such inspection. Inspections of the interior of individual units shall require not less than seventy-two (72) hours prior written notice.

9. Duration. (a) The covenants contained in this Agreement shall commence from the date this Agreement is recorded and remain in effect for period of fifty-five (55) years from the date the final certificate of occupancy is issued following the initial construction of the Development. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire Agency Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

(b) Upon the termination of the terms of this Agreement, the parties agree to

execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, that the execution and recording of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

10. Section 8 Certificate Holders. The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

11. Property Repair and Maintenance Covenant. Throughout the term of this Agreement, Owner agrees to maintain the Development in good physical condition and in accordance with the standards prescribed by applicable codes. The Owner further agrees to maintain the Development in a condition free of all waste, nuisance, debris, unmaintained vegetation and/or landscaping, graffiti, disrepair, abandoned vehicles/appliances, disturbances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring at the Development. Upon breach by the Owner of the covenant set forth in this Section, and the failure to cure such default within forty-five (45) days (or such longer period as the City may approve in its sole discretion) following written notice to Owner, the City, its agents, employees and contractors shall have the right to enter upon the Property to take such actions as are necessary to cure such default on Owner's behalf. Owner shall, within forty-five (45) days following City's written demand therefore, reimburse City for all internal and third party costs and expenses incurred by the City with respect to such cure. The maintenance covenant of this Section shall remain in effect for the duration of the term of this Regulatory Agreement.

12. No Transfer. The Owner shall not sell, transfer, convey, assign or lease the whole or any part of the Property without the prior approval of the City. Owner shall request City's approval by written notice at least thirty (30) days prior to any proposed transfer. This prohibition against transfer and requirement for City's approval shall not: (i) prevent the granting of easements or permits to facilitate the development of the Property, or (ii) prohibit or restrict the leasing of units within the Development, or (iii) apply to the following: (A) a transfer or assignment by Owner to a wholly-controlled affiliate of Eden Housing, Inc. or to a limited partnership whose general partner is a wholly-controlled affiliate of Eden Housing, Inc., (B) the admission of limited partners and any transfer of limited partnership interests in accordance with the Owner's partnership agreement for tax credit financing; (C) a transfer to the general partner of Owner in accordance with a right of first refusal or option contained in Owner's partnership agreement; (D) a transfer of the general partner's interest in Owner to a wholly-controlled affiliate of Eden Housing, Inc.; or (D) the removal of Owner's general partner by the investor limited partner for a default under the partnership agreement, provided the replacement general partner is reasonably satisfactory to the City.

13. Covenants to Run with the Land. (a) Owner hereby subjects the Property to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their

express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner upon conveyance of the Property to the Owner and upon Owner's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants and restrictions are set forth in such contract, deed or other instrument. Upon conveyance of the Property, the Owner or the successors in interest to Owner shall be released from any further obligations hereunder, and the covenants and restrictions set forth herein shall pass to and be binding upon the Owner's successors in interest to the Property.

(b) Notwithstanding any provision in this Agreement to the contrary, this Agreement shall terminate and be of no further force and effect in the event of (i) a foreclosure by the holder of a deed of trust or delivery of a deed in lieu of foreclosure, which prevents the City from enforcing the provisions hereof, or (ii) involuntary non-compliance with the provisions of this Agreement caused by an involuntary loss or substantial damage to the Development as a result of unforeseen events, including fire, seizure, change in a federal or state law or an action of a federal or state agency after the date hereof which prevents the City from enforcing the provisions hereof, or condemnation or similar actions; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or a similar event, the Owner or party related to the Owner obtains an ownership interest in the Development.

14. Non-Discrimination. The Owner, for itself and its successors and assigns, agrees that the Owner will not discriminate against any employee or applicant for employment because of sex, sexual orientation, marital status, familial status, race, color, religion, creed, disability, national origin, or ancestry, and that the Owner will comply with all applicable local, state and federal fair employment laws and regulations. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, disability, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

15. [Intentionally left blank]

16. [Intentionally left blank].

17. An Event of Default. Each of the following shall constitute an "Event of Default" by the Owner of this Regulatory Agreement:

(a) Failure by the Owner to duly perform, comply with and observe any of the

conditions, terms, or covenants of this Regulatory Agreement, if such failure remains uncured thirty (30) days after written notice of such failure from City to the Owner in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Owner fails to cure such breach within ninety (90) days or such longer period as the City may approve in its sole discretion. However, if a different period or notice requirement is specified under any other section of this Regulatory Agreement, then the specific provision shall control.

(b) Any representation or warranty contained in this Regulatory Agreement or in any application, financial statement, certificate, or report submitted by Owner to the City or City proves to have been incorrect in any material respect when made.

(c) A court having jurisdiction shall have made or rendered a decree or order (i) adjudging Owner to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Owner or seeking any arrangement on behalf of the Owner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or of any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Owner in bankruptcy or insolvency or for any of its properties; or (iv) directing the winding up or liquidation of the Owner, providing, however, that any such decree or order described in any of the foregoing subsections shall have continued unstayed or undischarged for a period of ninety (90) days.

(d) The Owner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment or execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is for cure hereunder) or prior to sale pursuant to such sequestration, attachment, or execution. If the Owner is diligently working to obtain a return or release of the property and City's interests hereunder are not imminently threatened in its reasonable business judgment, then the City shall not declare a default under this subsection.

(e) The Owner shall have voluntarily suspended its business or dissolved. The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Development, except for condemnation initiated by the City or the Agency.

18. Enforcement by the City. Upon the occurrence of an Event of Default, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages.

(b) Remedies Provided Under Loan Agreement. The City may exercise any other remedy provided under the Loan Agreement.

19. Subordination. This Agreement shall be subordinated to financing approved by

the City (in each case, a "Senior Lien"), but only if all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, shall be used to provide acquisition, construction and/or permanent financing or refinancing for the Development.

(b) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, a recognized affordable housing lending group such as the Housing Partnership Fund, or a public entity that is not affiliated with Owner or any of Owner's affiliates, other than as a depositor or a lender.

(c) Owner shall demonstrate to the City's reasonable satisfaction that subordination of this Agreement is necessary to secure adequate acquisition, construction, permanent financing and/or refinancing to ensure the viability of the Development, including the operation of the Development as affordable housing for lower income senior households. To satisfy this requirement, Owner will provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, permanent financing or refinancing to ensure the viability of the Development, and adequate financing for the Development would not be available on similar terms without the proposed subordination.

(d) The subordination agreement(s) shall be in a form reasonably acceptable to City Attorney and shall be structured to minimize the risk that this Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement should provide the City with rights to cure any defaults by Owner, including: (i) providing the City or its successor with copies of any notices of default at or near the same time and in the same manner as provided to Owner; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(e) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City, provided, however, that nothing in this subsection (e) shall prohibit the City from approving the refinancing of a Senior Loan.

(f) No subordination may limit the effect of the Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the City under the Regulatory Agreement, unless HUD is the holder of the Senior Loan, in which case the HUD required rider shall prevail.

(g) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

In addition, any agreement to subordinate shall comply with the requirements of Health and Safety Code section 33334.14.

20. No Impairment of Lien. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument.

21. Amendments. This Agreement may be changed only by an agreement in writing and signed by both parties.

22. Governing Law. This Agreement shall be construed according to the laws of the State of California. This Agreement is made for the benefit of the City and Owner, and no other person shall be deemed to have a right of action of any kind under this Agreement.

23. Headings; Construction. The headings to the various sections and paragraphs of this Agreement have been inserted for convenient reference only and shall not be used to construe this Agreement. The language of this Agreement will be construed as a whole according to its fair meaning and not strictly for or against any party. Time is of the essence in the performance of this Agreement by the parties.

24. Notices. Any notice required by or given pursuant to this Agreement shall be made in writing and shall be served personally or sent by certified mail, return receipt requested, or faxed or emailed with the original mailed by USPS on the next business day:

If to the City, addressed to:

City of Lafayette
3675 Mt. Diablo Boulevard, Suite 200
Lafayette, CA 94549
Attention: City Manager
Fax No: (925) 284-3169

If to the Owner, addressed to:

Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541-5031
Attention: Executive Director
Fax No. (510) 582-6523

Any notice given in accordance with the provisions of this Section shall be deemed to be effective, if delivered, on the date of such delivery or, if mailed, three (3) days after the date of the postmark, or if faxed and mailed via the USPS, on the date faxed, or if a pdf copy emailed and mailed via the USPS, on the date emailed. Each party may give notice to the other party of a change of its address for the purpose of giving notice under this Section.

25. Investor Limited Partner Provisions. If and when the Owner transfers the Property and assigns the Agency Loan to a limited partnership in accordance with Section 12 to qualify for

low income housing tax credit financing, the City agrees to the following provisions for the benefit of Owner's investor limited partner:

(a) The City will give the limited partner a copy of any written notice (at the limited partner's address set forth in this Agreement) that the City gives to Owner under this Agreement;

(b) The City will give the limited partner thirty (30) days after the limited partner's receipt of such notice to cure any other default under this Agreement;

(c) If a default is incapable of being cured within thirty days, the City will give the limited partner an additional ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

(d) If the limited partner makes any such payment or otherwise cures such default, the City will accept such action as curing such default as if such payment or cure were made by Owner;

(e) The City will permit the limited partner to transfer the limited partner's interest to any person or entity at any time provided that, if at the time of such transfer the limited partner has not made 100% of the capital contributions the limited partner is required to make to Owner, the limited partner shall remain liable to Owner for such capital contributions;

(f) The City will permit the limited partner to remove the general partner of Owner in accordance with the Owner's partnership agreement, provided that the substitute general partner is reasonably acceptable to City; and

(g) The City will permit insurance and condemnation proceeds to be used to rebuild the Development provided that (i) sufficient funds are provided from other sources to effectively rebuild the Development to a lawful multifamily housing complex, and (ii) subject to the rights of any senior lenders, City shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as City may impose.

26. HUD Requirements. If Owner receives a Reservation for a Section 202 Capital Grant from HUD, the City agrees to amend this Agreement to incorporate HUD mandated provisions prior to the HUD closing or recording of the HUD Use Agreement and HUD Regulatory Agreement.

27. Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent limited or general partnership, or joint venture between City and the Owner or the Owner's agents, employees or contractors, and

the Owner shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Regulatory Agreement for the operation of the Development. Except as otherwise expressly provided in this Regulatory Agreement, the Owner has and hereby retains the right to exercise full control of employment direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regards to the on-site operation of the Development, the Owner shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters. The Owner agrees to be solely responsible for its own acts and those of its agents and employees.

28. Non-Liability of Officials, Employees, and Agents. No member, official, employee, or agent of the City shall be personally liable to the Owner in the event of any default or breach by City or for any amount which may become due to the Owner or successor or on any obligation under the terms of this Regulatory Agreement. No director, officer, employee, agent of the Owner, or limited partner if Owner is a limited partnership, shall be personally liable to the City in the event of any default or breach by the Owner or for any amount which may become due to the City or successor or on any obligation under the terms of this Regulatory Agreement.

29. Hold Harmless. Except as such claims may arise from gross negligence or willful misconduct by City, if any person or entity performing work for the Owner on the Development shall assert any claim against the Agency, and the City and their elected officials, volunteers, employees, officers, attorneys and contractors (collectively, "Indemnified Parties"), City on account of any damage alleged to have been caused by reason of the negligent or willful acts of the Owner, the Owner shall defend at its own expense any suit based upon such claim; and if any judgment or claims against the Indemnified Parties, Agency or City shall be allowed, the Owner shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. Nothing herein stated shall be interpreted as a prohibition against the Owner seeking indemnification (either contractually or as a matter of law) from any third person or entity other than the Indemnified Parties.

In addition, the Owner shall defend the Indemnified Parties (with counsel reasonably satisfactory to City) against any claims or litigation of any nature whatsoever brought by third parties and directly or indirectly arising from the Owner's performance of its obligations under this Regulatory Agreement, and, in the event of settlement, compromise or judgment, hold the Indemnified Parties free and harmless therefrom.

30. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Regulatory Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party. No waiver of any default or breach by the Owner hereunder shall be implied from any omission by City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such wavier shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The

consent or approval by City to or of any act by the Owner requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Regulatory Agreement, nor shall it invalidate any act done pursuant to notice of default, or prejudice City in the exercise of any right, power, or remedy hereunder or under any agreements ancillary or related hereto.

31. Severability. If any term, provision, covenant or condition of this Regulatory Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

32. Binding Upon Successors. This Regulatory Agreement shall be binding upon the permitted heirs, administrators, executors, successors in interest and assigns of each of the Parties. Any reference in this Regulatory Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms hereof or under law.

33. Time of the Essence. As to all obligations under this Regulatory Agreement as to which time is a component, time is of the essence.

34. Complete Understanding of the Parties. This Regulatory Agreement may be executed in multiple originals, each of which shall be deemed to be an original. This Regulatory Agreement, the Agreement and their attached Exhibits constitute the entire understanding and agreement of the parties with respect to the matters herein discussed, except as otherwise expressly set forth herein.

35. Agreement to Record. Owner agrees that this Regulatory Agreement shall be recorded in the real property records of Contra Costa County, California concurrently with the close of escrow for the Property.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed on their behalf by their respective officers duly authorized, on the date first written above.

Eden Housing, Inc., a California nonprofit public benefit corporation

By: _____
Linda Mandolini
Executive Director

City of Lafayette, a municipal corporation

By: _____
Its: City Manager

Approved as to Form:

_____
City Attorney

PROMISSORY NOTE

$3,000,000

Lafayette, California
December 9, 2008

FOR VALUE RECEIVED, Eden Housing, Inc., a California nonprofit public benefit corporation ("**Borrower**"), promises to pay to the Redevelopment Agency of the City of Lafayette, a public body corporate and politic ("**Agency**"), in lawful money of the United States of America, the principal sum of Three Million Dollars ($3,000,000) or so much thereof as may be advanced by Agency pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance at the rate of three percent (3%) simple interest per annum, commencing upon the date of disbursement. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

1. LOAN AGREEMENT. This Promissory Note ("**Note**") has been executed and delivered pursuant to and in accordance with that Loan Agreement executed by and between Borrower and Agency dated as of December 10, 2008 ("**Loan Agreement**"), which is incorporated by this reference herein. Capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement.

2. REPAYMENT

2.1 CONTROLLING DOCUMENTS.

(A) Notwithstanding any contrary provision set forth herein including without limitation the definition of Surplus Cash, if and for so long as the Property is encumbered by a Use Agreement, Regulatory Agreement, and/or Deed of Trust in favor of the U.S. Department of Housing and Urban Development ("HUD") in connection with a Section 202 Capital Grant (the "HUD 202 Documents"), the mandatory HUD provisions as set forth in any Rider to the Loan Agreement, this Note or Agency Deed of Trust shall govern.

(B) During such time that Property is not encumbered by the HUD 202 Documents or if HUD approves a distribution of Residual Receipts as defined by HUD, repayment of this Note if approved by HUD shall be governed by the provisions of that Inter-Creditor Agreement dated as of December 10, 2008 among the Agency, Borrower and the County of Contra Costa, recorded concurrently with the Deed of Trust securing this Note.

(C) If HUD Section 202 financing is used the Agency and Borrower agree to amend this Note and/or the Inter-Creditor Agreement (subject to the County of Contra Costa's approval) to specifically provide that Borrower shall be entitled to pay Eden Housing, Inc. its full developer fee without deferment and that the following reserve accounts shall be funded prior to the Development's permanent loan closing in the amounts necessary to capitalize the monthly or annual payments required by a holder of an Approved Senior Loan, or by Borrower and approved by the Agency in its reasonable discretion: operating; tenant services; partnership management fee; investor asset management fee; and bond issuer fees and other bond-related fees, if any. The Agency and Borrower acknowledge that Development costs not allowed by HUD to be paid prior to HUD's determination of surplus cash or residual receipts must be capitalized and placed in reserve accounts for the benefit of

the Development. Interest earned on the above reserves shall become a part of each reserve and used only for the purpose for which each reserve is established.

(D) The following repayment provisions shall apply only after (A) and (B) are no longer applicable.

2.2 PAYMENTS; MATURITY DATE. This Note shall be paid only on a residual receipts basis from the Surplus Cash (as defined and calculated below) generated by the Development. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. No amount due under this Note shall become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and any other sums accrued hereunder shall be payable in full on the fifty-fifth (55^{th}) anniversary of the date upon which City of Lafayette issues a final certificate of occupancy for the Development ("**Maturity Date**").

2.3 ANNUAL PAYMENTS FROM SURPLUS CASH. By no later than May 15 of each year following the issuance of a final certificate of occupancy for the Development, Borrower shall pay to Agency fifty percent (50%) of all Surplus Cash generated by the Development during the previous calendar year to reduce the indebtedness owed under this Note. No later than May 1 of each year following the issuance of a final certificate of occupancy for the Development, Borrower shall provide to Agency Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as Agency may reasonably request, including without limitation, an independent audit prepared for the Development by a certified public accountant in accordance with generally accepted accounting principles. No later than November 15 of each year following issuance of the final certificate of occupancy for the Development, Borrower shall provide to Agency a projected budget for the following calendar year which shall include an estimate of Surplus Cash.

2.3.1 "**Surplus Cash**" shall mean for each calendar year during the term of this Note, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Development. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Development, less fees and closing costs reasonably incurred in connection with such refinancing, and any Agency-approved uses of the net cash proceeds of the refinancing.

2.3.2 "**Gross Revenue**" shall mean for each calendar year during the term of this Note, all revenue, income, receipts and other consideration actually received by Borrower from the operation and leasing of the Development. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance; condemnation awards for a taking of part or all of the Development for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Development. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

2.3.3 "**Annual Operating Expenses**" shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans which have been approved by the Agency and which are secured by deeds of trust senior in priority to the Agency Deed of Trust ("**Approved Senior Loans**"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects; property management staff salaries; premiums for property damage, liability and other insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Development; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services and activities; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and for tenant services in the amount reasonably required the holder of an Approved Senior Loan or by Borrower with the written approval of Agency; partnership management fees payable to the general partner of Developer in the maximum aggregate sum of $25,000 per year payable only for so long as Developer is a limited partnership; an asset management fee not to exceed $8,000 per year, increasing by 3% per year annually after the first three years (plus any accrued but unpaid amount for prior years) payable to the investor limited partner of Developer; any previously unpaid portion of the developer fee (without interest) due Eden Housing, Inc.; cash deposits into operating reserves in the amount (if any) required by the holder of an Approved Senior Loan or reasonably required by Borrower and approved in writing by Agency; other ordinary and reasonable operating expenses; and extraordinary operating costs approved in writing by the Agency. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in this Section shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

2.3.4 EXCLUSIONS FROM ANNUAL OPERATING EXPENSES. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 2.3.3); contributions to Development operating reserves (except as permitted pursuant to Section 2.3.3) ; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Agency Deed of Trust; depreciation, amortization, depletion or other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses in accordance with the limitations set forth in Section 2.3.3 above even if paid to an affiliate of Borrower or a partner of Borrower, if any: fees paid to a property management agent or resident services agent, partnership management fees, and asset management fees.

2.4 DUE ON SALE; ASSIGNMENT. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as

defined in Section 3.16 of the Loan Agreement) without Agency consent, of all or any part of the Development or any interest therein other than a Transfer permitted with Agency consent pursuant to the Loan Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without Agency's prior written consent, which consent may be granted or denied in Agency's sole discretion; provided however, this Note may be assumed in connection with a permitted Transfer described in Section 3.16 of the Loan Agreement.

3. PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

4. MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to Agency at 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549 or such other place as Agency shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Agency in writing.

5. DEFAULT; DEFAULT RATE. If Borrower does not pay the above payments within the 30 calendar days of the date due, Borrower will be in default under this Note. During the time that any default exists under this Note, interest shall automatically be increased without notice to the rate set forth on page 1 of this Note (the "non-default rate") plus ten percent (10%) or the maximum amount permitted by law(the "Default Rate") and shall accrue and be due and payable in lieu of the non-default rate from the date of the Default to the earlier of (i) the date of repayment in full of the disbursed principal amount of the loan and any interest due thereon or (ii) the date the Default is cured. When Borrower is no longer in default, the Default Rate shall no longer apply and the interest rate shall once again be the non-default rate. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Holder from exercising any of its other rights or remedies. Neither acceptance by the Agency of the payments provided for herein nor any failure by the Agency to pursue its legal and equitable remedies upon Default shall constitute a waiver of the Agency's right to require prompt payment when due of all disbursed principle and interest owing or to declare Default and exercise all of its rights under this Note and the Loan Agreement.

6. SECURITY; REMEDIES. This Note is secured by a Deed of Trust, Assignment of Rents, Assignment of Plans, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of Agency and encumbering the Development in Contra Costa County and other property described therein. Upon the failure of the Borrower to perform or observe any provision of this Note or Deed of Trust, at the option of Holder and with thirty (30) days' prior written notice, the entire unpaid principal and interest, if any, owing on this Note shall become immediately due and payable, and Holder may exercise its rights or remedies hereunder or thereunder. This Note is executed and delivered in the State of California and shall be governed by the laws of the State of California.

7 WAIVER; ATTORNEY'S FEES. The Borrower, for itself, its heirs, legal representatives, successors and assigns, waives diligent presentment, protest and demand, and notice of protest, dishonor and non-payment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change,

alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees. If an action is instituted on this Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

8. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9. NONRECOURSE. (a) Except as set forth in paragraph (b) below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan, and the sole recourse of the Agency with respect to the principal of, or interest on, the Note shall be to the property described in the Deed of Trust and in the Assignment of Plans; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Agency thereunder, or (b) be deemed in any way to impair the right of the Agency to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

(b) The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note, except as hereafter set forth. Nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Agency under Sections 3.4, 3.12, 3.19 and 6.4 of the Loan Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

10. ASSIGNMENT. The Agency's rights under this Note may be assigned by the Agency in its discretion.

11. CONFLICT. If any term or provision of this Note conflicts with any term or provision of the Loan Agreement, the term of provision of the Loan Agreement shall control to the extent of such conflict.

12. BINDING. The terms, covenants and conditions contained herein shall be binding upon the heirs, successors and assigns of Borrower and shall inure to the benefit of the heirs, successors and assigns of the Agency.

13. SEVERABILITY. The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other person or circumstances, and all provisions of this Note, in all other respects, shall remain valid and enforceable.

14. INDEMNIFICATION. Subject to the nonrecourse provision in Section 9 above, Borrower agrees to indemnify the Agency and City and to hold the Agency and City and their

respective successors and assigns harmless from and against all costs of collection, including attorneys' and expert witness fees and all cost of suit, in the event the unpaid principal sum of this Note or any interest accrued on this Note is not paid when due.

15. ASSUMPTION. THE BORROWER'S OBLIGATIONS UNDER THIS NOTE MAY NOT BE ASSIGNED OR OTHERWISE TRANSFERRED OR ASSUMED, WITHOUT THE PRIOR WRITTEN CONSENT OF THE AGENCY, WHICH MAY BE GIVEN OR WITHHELD IN THE SOLE AND ABSOLUTE DISCRETION OF THE AGENCY. THE FOREGOING RESTRICTION SHALL NOT APPLY TO A GENERAL OR LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION OF WHICH BORROWER OR A WHOLLY-CONTROLLED AFFILATE OF BORROWER IS A GENERAL PARTNER (IN THE CASE OF A PARTNERSHIP), A MANAGING MEMBER OR MANAGER (IN THE CASE OF A LIMITED LIABILITY COMPANY), OR A "CONTROL PERSON" DEFINED BY FEDERAL SECURITIES LAW (IN THE CASE OF A CORPORATION).

PRIOR TO SIGNING THIS PROMISSORY NOTE, THE BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS. THE BORROWER AGREES TO THE TERMS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER

Eden Housing, Inc.
a California nonprofit public benefit corporation

By: _____
Linda Mandolini
Executive Director